

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B03  
PLR-142764-11

Date:  
March 02, 2012

### Legend

Company =

State =

a =

b =

c =

Trust 1 =

Trust 2 =

Dear :

This responds to a letter dated September 23, 2011, and subsequent correspondence, submitted on behalf of Company requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that Company was incorporated on a, under the laws of State and elected to be an S corporation effective a. On b, one of Company's shareholders transferred Company stock to Trust 1 and Trust 2. Company represents that Trust 1 and Trust 2 each qualifies as an electing small business trust ("ESBT")

within the meaning of § 1361(e). However, no ESBT election was properly filed for Trust 1 or Trust 2. As a result, Company's S corporation election terminated on b. Thereafter, on c, Company stock was transferred in a transaction that Company and its shareholders were aware would terminate Company's S election.

Company represents that the circumstances resulting in the termination of the Company's S corporation election on b were inadvertent and were not motivated by tax avoidance or retroactive tax planning. Company and its shareholders during the period beginning on b and ending on c have agreed to make such adjustments, consistent with the treatment of Company as an S corporation, as the secretary may require.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based on the information submitted and the representations made, we conclude that the termination of Company's S corporation election on b was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), Company will be treated as continuing to be an S corporation during the period beginning on b and ending on c, provided Company's S corporation election was valid and provided that the election was not otherwise terminated under § 1362(d).

This ruling is contingent on Company and all of Company's shareholders during the period beginning on b and ending on c treating Company as having been an S corporation during that period. The shareholders of Company, in determining their income tax liabilities for the period beginning on b and ending on c, must include their pro rata share of the separately stated and nonseparately computed items of income, loss, deduction, or credit as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by Company as provided in § 1368. This ruling is also contingent on the trustees of Trust 1 and Trust 2 filing ESBT elections effective b, with the appropriate service center. The ESBT elections and any amended returns must be filed within 120 days following the date of

this letter, and a copy of this letter should be attached to such elections and returns. If Company or its shareholders fail to treat themselves as described above, this ruling shall be null and void.

Except for the specific rulings above, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion regarding Company's eligibility to be treated as an S corporation or the qualifications of Trust 1 or Trust 2 as an ESBT.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to Company's authorized representative.

Sincerely,

Stacy L. Short  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter  
Copy for § 6110 purposes